

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**VIRNETX INC. AND  
LEIDOS, INC.,**

**Plaintiffs,**

**v.**

**APPLE INC.**

**Defendant.**

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**Civil Action No. 6:12-cv-00855**

**JURY TRIAL DEMANDED**

**UNOPPOSED MOTION REQUESTING PORTIONS OF  
THE DAMAGES TRIAL TRANSCRIPT BE SEALED**

Pursuant to the Court’s November 2, 2020 Notice of Filing of Official Transcripts (Dkt. Nos. 983–996), Defendant Apple Inc. (“Apple”), by its undersigned counsel, respectfully moves this Court to seal portions of the Official Transcript of Jury Trial Proceedings held on October 29, 2020 and October 30, 2020 before Judge Schroeder, which were reported by Ms. Shelly Holmes.

Though the public has a general right to access judicial records, this right is not absolute. *See Motorola, Inc. v. Analog Devices, Inc.*, No. 1:03-CV-131, 2003 WL 25778434, at \*1 (E.D. Tex. June 6, 2003 (*citing Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978))). On October 29 and October 30, during the jury trial that was held from October 26–30, the parties discussed non-public information regarding Apple’s and third parties’ confidential technical and business operations. Apple now seeks to appropriately balance protecting this highly confidential and sensitive data and the ongoing use of such information in this case.

Accordingly, Apple requests the following portions of the October 29, 2020 (AM) Transcript that contains highly confidential and sensitive technical data related to Apple's tracking of downloads on its iOS devices be sealed:

1. Page 817, line 5: the words "[REDACTED]."
2. Page 817, line 13: the words "[REDACTED]."
3. Page 817, line 16: the words "[REDACTED]."
4. Page 853, line 20: the words "[REDACTED]."
5. Page 854, line 4: the words "[REDACTED]."
6. Page 854, line 7: the word "[REDACTED]."

Apple also requests the following portions of the October 29, 2020 (PM) Transcript which contain highly confidential and sensitive information regarding the technical operation of non-party [REDACTED] products be sealed:

7. Page 939, line 8: the word "[REDACTED]"
8. Page 939, line 10: the word "[REDACTED]."
9. Page 939, lines 19-23: the words between "the" and "calls," including "calls."
10. Page 940, line 1: the word "[REDACTED]"
11. Page 940, lines 7-12: the words between "if" and "calls," including "calls."
12. Page 940, line 13: the word "[REDACTED]"
13. Page 940, line 14: the word "[REDACTED]"
14. Page 940, line 17: the word "[REDACTED]"
15. Page 940, line 19: the words "[REDACTED]" and "[REDACTED]"
16. Page 940, line 24: the word "[REDACTED]"
17. Page 941, line 8: the words between "did" and "take."

18. Page 965, line 24: the word “[REDACTED]”
19. Page 966, line 1: the word “[REDACTED]”
20. Page 966, line 4: the word “[REDACTED]”
21. Page 966, line 8: the word “[REDACTED]”
22. Page 966, lines 13-16: the words between “the” and “The.”
23. Page 966, lines 21-25: the words between “the” and “call,” including “call.”

Apple also requests the following portions of the October 29, 2020 (PM) Transcript which contain highly confidential and sensitive information regarding the technical and business operations of non-parties [REDACTED], and Apple’s relationship thereto, be sealed:

24. Page 953, line 10: the word “[REDACTED]”
25. Page 953, line 12: the word “[REDACTED]”
26. Page 953, line 14: the word “[REDACTED]”
27. Page 954, line 1: the word “[REDACTED]”
28. Page 954, line 7: the word “[REDACTED]”
29. Page 954, line 9: the word “[REDACTED]”
30. Page 954, line 10: the words “[REDACTED].”
31. Page 954, line 14: the word “[REDACTED].”
32. Page 954, line 17: the word “[REDACTED]”
33. Page 954, line 19: the words “[REDACTED].”
34. Page 954, line 22: the words “[REDACTED].”
35. Page 954, line 24: the word “[REDACTED].”
36. Page 954, line 25: the word “[REDACTED]”

37. Page 955, line 2: the word “[REDACTED]”

Apple further requests that the following portions of the October 30, 2020 (AM) Transcript that contain highly confidential and sensitive financial data related to Apple’s commercial relationship with non-party [REDACTED] be sealed:

38. Page 1147, line 14: the word “[REDACTED]”

39. Page 1149, line 18: the word “[REDACTED]”

40. Page 1149, line 20: the word “[REDACTED]”

41. Page 1150, line 3: the word “[REDACTED]”

42. Page 1150, line 10: the word “[REDACTED]”

43. Page 1150, line 13: the word “[REDACTED]”

44. Page 1150, line 24: the word “[REDACTED]”

45. Page 1151, line 9: the word “[REDACTED]”

46. Page 1151, line 20: the word “[REDACTED].”

47. Page 1152, line 7: the word “[REDACTED]”

48. Page 1152, line 18: the word “[REDACTED]”

49. Page 1152, line 22: the word “[REDACTED]”

50. Page 1152, line 24: the words “[REDACTED].”

51. Page 1159, line 13: the word “[REDACTED]”

52. Page 1159, line 16: the words “[REDACTED].”

53. Page 1171, line 23: the word “[REDACTED]”

54. Page 1171, line 24: the word “[REDACTED]”

55. Page 1172, line 6: the word “[REDACTED]”

Attached as Exhibits A–C are copies of the Official October 29 (AM), October 29 (PM), and October 30 (AM) Trial Transcripts containing the above proposed redactions. Access to this confidential and sensitive information would not further the purpose of the public’s general right to access judicial records. Indeed, the portions of the Transcript requested to be sealed contain similar information to the portions of the Transcript currently under seal (*e.g.*, 10/29/20 (AM) (Sealed) Trial Tr. at 3:3-8:23 (sealed discussion of another Apple license)) and redacted from the parties’ motions for judgment as a matter of law (*e.g.* Dkt. 1002 at 5, 7 (redacting language from [REDACTED] license agreement)). Furthermore, Counsel for Apple has conferred with counsel for Plaintiffs VirnetX Inc. and Leidos, Inc. (“Plaintiffs”), and Plaintiffs do not oppose Apple’s request to seal. Consequently, Apple requests the court file the Official October 29 (AM), October 29 (PM), and October 30 (AM) Trial Transcripts with the above-identified portions sealed, and requests this Court enter an order directing the same.

WHEREFORE, Apple respectfully requests this Court seal portions of this Court’s Official October 29 (AM), October 29 (PM), and October 30 (AM) Trial Transcripts.

Dated: November 9, 2020

Respectfully submitted,

/s/Leslie M. Schmidt

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Gregory S. Arovas  
greg.arovas@kirkland.com  
Robert A. Appleby  
robert.appleby@kirkland.com  
Jeanne M. Heffernan  
jeanne.heffernan@kirkland.com  
Joseph A. Loy  
joseph.loy@kirkland.com  
Leslie M. Schmidt  
leslie.schmidt@kirkland.com  
Nathaniel L. DeLucia  
nathaniel.delucia@kirkland.com  
Ryan Jin  
ryan.jin@kirkland.com  
**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

Akshay S. Deoras  
akshay.deoras@kirkland.com  
**KIRKLAND & ELLIS LLP**  
555 California Street  
San Francisco, CA 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500

Nathan S. Mammen  
nathan.mammen@kirkland.com  
**KIRKLAND & ELLIS LLP**  
1301 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Telephone: (202) 389-5000  
Facsimile: (202) 389-5200

Michael E. Jones, *Lead Attorney*  
Texas Bar No. 10969400  
mikejones@potterminton.com  
**POTTER MINTON**  
A Professional Corporation  
110 N. College Avenue, Suite 500  
Tyler, Texas 75702  
Telephone: (903) 597-8311  
Facsimile: (903) 593-0846  
**ATTORNEYS FOR APPLE INC.**

**CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL**

This is to certify that this court document should be filed under seal because it contains material designated under the Protective Order approved and entered in this case.

/s/ Leslie M. Schmidt

Leslie M. Schmidt

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via electronic email on November 9, 2020. I also hereby certify that all counsel of record who have consented to electronic service are being served with a notice of filing of this document, under seal, pursuant to L.R. CV-5(a)(7) on November 9, 2020.

/s/ Leslie M. Schmidt

Leslie M. Schmidt

**CERTIFICATE OF CONFERENCE**

The undersigned certifies that the parties have complied with Local Rule CV-7(h)'s meet and confer requirement. Counsel for Plaintiffs and Apple conferred via email and counsel for Plaintiffs stated that Plaintiffs do not oppose the relief sought in this motion.

/s/ Leslie M. Schmidt

Leslie M. Schmidt